



Louisiana Housing Corporation

August 5, 2016

The Honorable Secretary Julián Castro
Office of the Secretary
U.S. Department of Housing and Urban Development
451 7th Street S.W., Room 10000
Washington, DC 20410

Re: Supplemental Response: Written Request for Conflict of Interest Exception – Mr. Charles Tate as Executive Director of the Louisiana Housing Corporation (LHC)

Dear Secretary Julián Castro:

Please accept this as a supplement to LHC's written request ("**Written Request**") for a Conflict of Interest Exception ("**Conflict Exception**") for Mr. Charles Tate to serve as Executive Director of LHC.

Prior correspondence is attached and includes **Exhibit A** dated July 7, 2016 from LHC's Interim Executive Director, E. Keith Cunningham, Jr., to William Daley, Esq., Regional Counsel, Region VI, U.S. Department of Housing and Urban Development ("**HUD**"), which requested a HUD conflict of interest review of Mr. Charles Tate in connection with several federal housing programs ("**Federal Housing Programs**") for which a Conflict Exception for Mr. Tate was being sought.

That correspondence also includes LHC's Written Request dated July 26, 2016 identifying 24 CFR §92.356(e) Exception Factors for consideration by HUD in granting the requested Conflict Exception for Mr. Charles Tate.

Meanwhile this current supplemental response ("**Conflict Exception Supplement**") is submitted on the request of Messrs. Kinnear and McDonald, HUD Counsel assigned to HUD's Fort Worth office, who suggested to Rod Solomon, Esq. that we supplement our original Request by separately addressing each of the six exceptions set forth at 24 CFR §92.356(e).

24 CFR §92.356(e) Exceptions

1. *Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available. 24 CFR §92.356(e)(1).*

Mr. Tate's possesses affordable housing development experience both as the CEO of a nonprofit Community Housing Development Organization ("CHDO") and in connection with assisting other nonprofit organizations construct and preserve affordable housing. Mr. Tate's experience developing affordable housing in the private nonprofit sector will permit the LHC to imagine and implement policies and programs to benefit LHC's partners in the private sector who are essential to the production of affordable housing through the housing programs which Mr. Tate has used, including in HUD 202, 811 and BMIR, USDA 515 and stand-alone properties, and financed with conventional and HUD 221 loans, Louisiana Housing Trust Funds, HOME funds, Federal Home Loan Bank grants, and Low Income Housing Tax Credit equity.

Mr. Tate is uniquely qualified to help the LHC achieve its goal of expanding the capacity of nonprofit housing organizations to blend resource policies and programs required in the private sector to produce and sustain affordable housing. No one else on LHC staff has Mr. Tate's breadth of hands-on affordable housing development experience at a time when program resources have been reduced. LHC's Board of Directors believes it is important to cost effectively produce and preserve affordable housing across this State and that Mr. Tate's talent with private sector development will be cost beneficial.

2. *Whether the person affected is a member or a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class. 24 CFR §92.356(e)(2).*

While Mr. Tate is not a member of the class identified in 24 CFR §92.356(e)(2), his prior service as CEO of a CHDO will permit the LHC to utilize Mr. Tate's insights and experience to better serve CHDOs, particularly in rural areas. By definition CHDOs' boards of directors must include low-income persons who are representatives of their communities.

3. *Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question. 24 CFR §92.356(e)(3).*

The simple answer is that Mr. Tate has withdrawn or will withdraw from the functions, responsibilities and decision-making process as required by State Ethics and HUD.

Prior to becoming Executive Director of LHC, the State Ethics Board states that Mr. Tate must withdraw from any projects for which he is owed compensation and must resign from service to the certified Community Housing Development Organization (CHDO). In addition, while serving as Executive Director, Mr. Tate will be prohibited from

providing assistance on other projects to which he previously provided management, development, consulting or other services. The State Ethics Opinion concludes, however, that Mr. Tate is not prohibited from being paid for services prior to his employment with the LHC while he serves as the Executive Director of LHC provided he has no ongoing private or public role with those projects. However, LHC respectfully requests that after he is seated Mr. Tate be permitted to continue to work with Staff, nonprofits and others beyond that restriction, so that this Agency and the state at large can benefit from his insight and experience in tailoring programs and seeing them effectively implemented.

4. *Whether the interest or benefit was present before the affected person became a covered person under conflicts prohibited.* 24 CFR §92.356(e)(4).

All interest or benefits were accrued for work expended before, and only before, Mr. Tate becomes a “covered person” as defined by 24 CFR §92.356(c).

Mr. Tate was never in a position to participate in a decision-making process to award any Federal Housing Program Funds to any of the projects awarded Federal Housing Program Funds by LHC before his employment as Executive Director. The State Ethics Opinion concludes, however, that Mr. Tate is not prohibited from being paid for services prior to his employment with the LHC while he serves as the Executive Director of LHC.

5. *Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict.* 24 CFR §92.356(e)(5).

Participating Jurisdiction. We believe that an undue hardship will result to the participating jurisdiction were we as a State Housing Finance Agency not permitted by HUD to seat our duly nominated and elected Executive Director designee, given the need we (like you) have to optimally allocate the very limited resources available to us as we seek to address the virtually unlimited need for safe, decent, affordable housing residences across Louisiana. Our duly constituted Board of Directors has come to the conclusion that Mr. Tate has just the right background and experience to suit this need and myriad others.

Person Affected. An undue hardship will also befall Mr. Tate were this relief not requested.

The Louisiana statute creating the Louisiana Housing Corporation establishes a three year term for our Executive Director. Meanwhile Louisiana’s Ethics laws prohibit an “Agency Head” from doing business with his or her former Agency for two years after leaving office for any reason. These laws will apply to Mr. Tate. Moreover, by the nature of the affordable housing development business, Developer Fees are often not paid until several years later (when they are available to be paid at all), so in practical terms it

is unlikely that Mr. Tate will have any income for four years or more following his employment here.

If HUD were not to grant this Conflict Exception under the terms and conditions required by the Louisiana Ethics Board as outlined in the State Ethics Opinion, then Mr. Tate and his family will suffer an undue and unnecessary hardship in not being paid for services rendered prior to his employment as permanent LHC Executive Director pursuant to the restrictions of our State's Board of Ethics, if only to make them whole after his tenure with LHC comes to a close.

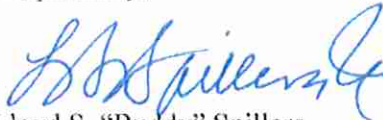
6. *Any Other Relevant Factors.*

Application of State Ethics Law: The Louisiana Board of Ethics rigorously enforces our State's Ethics laws. The Board of Ethics as well as the LHC Board, Staff and HUD are all fully aware of the conditions for Mr. Tate's employment as permanent Executive Director.

Mr. Tate has fully disclosed all relevant facts that may be an actual or even perceived conflict of interest even though he is not a direct party to any contracts with LHC or with HUD.

In light of the foregoing, the LHC respectfully requests the Conflicts Exception for Mr. Charles Tate be granted by HUD so we can fill this permanent LHC Executive Director position that has been vacant for more than a year.

Respectfully,



Lloyd S. "Buddy" Spillers
LHC Board Chairman



Louisiana Housing Corporation

July 7, 2016

William J. Daley, Esq.
Regional Counsel, Region VI
U.S. Department of Housing and Urban Development
801 Cherry Street, Room 2816
Fort Worth, Texas 76102

Re: HUD conflict of interest review in connection with appointment of Charles A. Tate to be the Executive Director of the Louisiana Housing Corporation (LHC)

Dear Mr. Daley:

The LHC, Louisiana's State Housing Finance Agency (HFA), has appointed Mr. Tate to be its Executive Director, subject to a Louisiana State Board of Ethics advisory opinion and a HUD conflict of interest review (see Exhibits A and B). I am writing to request HUD's opinion regarding potential conflict of interest concerns and Mr. Tate's proposed resolution of such concerns, as specified below. The LHC would like HUD's confirmation that this proposed course of action complies with the regulations at 2 CFR 200.318(c)(1) and any other requirements that HUD deems applicable. The regulation cited provides in part that:

"No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract."

Mr. Tate's Private-Sector Activities

Mr. Tate has a distinguished background and currently serves as Chief Executive Officer (CEO) for Community Directions, Inc. (CDI), a non-profit Louisiana Community Housing Development Organization (CHODO), a United States Treasury-certified Community Development Entity (CDE) and a provider of affordable housing services more generally. CDI has sponsored and cosponsored several affordable housing developments over the years using

funding from HUD's CDBG, HOME, Section 8 project-based rental assistance and project-based voucher, Section 202 and Section 811 funds and sometimes FHA insurance including Section 221 and the HFA risk-sharing program, as well as non-HUD funds including bank loans, Low-income Housing Tax Credits (LIHTC), USDA Section 515 program and Federal Home Loan Band Affordable Housing Program grants. In some instances the funding (e.g., HOME funds) or program administration (e.g., Section 8 contract administration, HOME administration, LIHTC allocating agency) for these programs has come through the LHC, and CDI has responded to a pending HOME funding RFP.

The CDI Board has authorized Mr. Tate to act as developer and consultant for non-CDI projects, and he has done so individually or mostly in recent years as Principal of Jasmine Consulting (Jasmine), LLC, which is 90% owned by him. Jasmine has used some of the same HUD programs, sometimes with funding coming through or program administration the responsibility of the LHC.

Pending and future activities regarding HUD programs

A. Work completed where payment is owed

There are several affordable housing developments funded or regulated by the LHC where Mr. Tate is owed money, either by CDI in his capacity as Executive Director or by a private for-profit entity to Jasmine or to him directly, for work he already has completed (see Exhibit C). Mr. Tate has represented that he will do no more work on these developments. Mr. Tate and the LHC request confirmation that Mr. Tate can be paid for this completed work without violation of any HUD conflict-of-interest rules.

B. Provision of future unpaid advice to non-profit or for-profit affordable housing developers

As part of his job as Executive Director, Mr. Tate would like to be able to provide unpaid advice to CDI and to other non-profit and for-profit affordable housing developers on projects with which he has not been associated. Mr. Tate and LHC would like confirmation that Mr. Tate is free to do this and need not recuse himself from any LHC Board or other actions in connection with developments where he has provided such advice.

C. Future Board action regarding CDI or Jasmine projects

Mr. Tate would recuse himself from any Board or other LHC discussion and/or action that specifically involves a CDI, Jasmine or other project in which he has an ongoing financial interest (i.e., an interest that may result in further payments to him), notably the developments listed in Exhibit C until he receives final payment. This would not include general LHC policy or other actions that would affect a class of projects that includes some projects in which he has

Mr. William Daley
July 8, 2016
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such an interest. Mr. Tate will not have an ongoing financial interest in any other development while he serves as Executive Director of the LHC.

Requested HUD action

I request that as soon as possible, HUD confirm that Mr. Tate and LHC's proposed treatment of the situations described above is acceptable under HUD conflict of interest requirements and standards. Please let me know of anything Mr. Tate, the Board of Directors or I can do to answer questions or otherwise help expedite HUD's reply.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. Cunningham, Jr.", with a stylized flourish extending to the right.

E. Keith Cunningham, Jr.
Interim Executive Director

cc: Charles E. Tate
Buddy Spillers, Chair, LHC Board of Directors



Louisiana Housing Corporation

July 26, 2016

The Honorable Julian Castro
Office of the Secretary
U.S. Dept. of Housing & Urban Development
451 7th Street S.W., Room 10000
Washington, DC 20410

Re: Written Request for Conflict of Interest Exception – Mr. Charles Tate as Executive Director of the Louisiana Housing Corporation (LHC)

Dear Secretary Castro:

The LHC is responsible for distributing HOME Funds throughout the State of Louisiana according to the State's assessment of the geographical distribution of the housing needs within the State as identified in the State's approved consolidated plan.

On June 8, 2016, the Board of Directors of LHC approved the appointment of Mr. Charles Tate as Executive Director subject to receipt of a Louisiana State Board of Ethics advisory opinion and a HUD Conflict of Interest Review of payments to be received for work completed by Mr. Tate in the private sector in connection with projects awarded Federal funds by LHC before his employment as Executive Director.

Public Disclosure of Conflict of Interest

Attached hereto as **Exhibit "A"** is the Conflict of Interest Public Disclosure for Mr. Charles Tate now posted at www.lhc.la.gov to the LHC website under Public Comments and Notices. Included in the website posting are the following: (i) LHC's correspondence to the Louisiana Ethics Board describing Mr. Tate's consultant services and payments to be received while he serves as Executive Director of the LHC, (ii) Ethics Board Docket No. 2016-531 and its advisory opinion (the "State Ethics Opinion") and (iii) this written request to HUD for an exception to the conflicts prohibited by 24 CFR §92.356(b) in accordance with the threshold requirements and factors to be considered for exceptions as stated at 24 CFR §92.356(d).

No Violation of State or Local Law

Attached hereto as **Exhibit "B"** is the State Ethics Opinion that Mr. Tate is not prohibited from being paid for services prior to his employment with the LHC while he serves as the Executive Director of LHC.

Satisfaction of Threshold Requirements for an Exception

The Threshold Requirements for HUD to grant an exception for Mr. Tate are evidenced by (i) the LHC website posting at www.lhc.la.gov and (ii) the State Ethics Opinion.

Exception Factors

The following Exception Factors are submitted to HUD for consideration in granting the requested exception for Mr. Charles Tate:

1. Nonprofit Consulting Practice and Expertise: Mr. Tate's affordable housing development experiences consulting and working with nonprofit organizations to construct and preserve affordable housing, including HUD 202, 811 and BMIR properties are uniquely suited to the LHC's goals of expanding the capacity of nonprofit housing organizations, particularly in rural areas.
2. Withdrawal as a Service Provider to the Private Sector: Prior to becoming Executive Director of LHC, the State Ethics Opinion states that Mr. Tate will withdraw from any projects for which he is owed compensation. He will resign his position as CEO of Community Directions, Inc. (CDI), a nonprofit, state-certified Community Housing Development Organization (CHDO). While serving as Executive Director, Mr. Tate will be prohibited from providing assistance on projects in which he previously provided management, development, consulting or other services.
3. No Prior Participation In Decisionmaking Process: Mr. Tate was never in a position to participate in a decisionmaking process to Award HOME Funds to any of the projects awarded HOME Funds by LHC before his employment as Executive Director. The State Ethics Opinion concludes, however, that Mr. Tate is not prohibited from being paid for services prior to his employment with the LHC while he serves as the Executive Director of LHC.
4. Application of State Ethics Law: Louisiana Ethics laws are rigorously enforced and prohibit former agency heads from transacting any business with their agency for two years.

Respectfully,



Lloyd S. "Buddy" Spillers
LHC Board Chairman

CONFLICT OF INTEREST PUBLIC DISCLOSURE
Mr. Charles Tate - LHC Executive Director

On June 8, 2016, Board of Directors of the Louisiana Housing Corporation (LHC) approved the appointment of Mr. Charles Tate as Executive Director subject to receipt of a Louisiana State Board of Ethics advisory opinion and a HUD Conflict of Interest review of payments to be received for work completed by Mr. Tate in the private sector in connection with projects awarded Federal funds by LHC before his employment as Executive Director.

Ethics Board Docket No. 2016-531 (the "State Ethics Opinion")

Upon becoming Executive Director of LHC, the State Ethics Opinion states that Mr. Tate will resign his position as CEO of Community Directions, Inc. (CDI), a nonprofit, state-certified Community Housing Development Organization (CHDO). While serving as Executive Director, Mr. Tate and a company in which he holds an ownership interest are prohibited from providing assistance on projects in which he previously provided management, development, consulting or other services to CDI and other non-profits. The State Ethics Opinion concludes that Mr. Tate is not prohibited from being paid for services prior to his employment with the LHC while he serves as the Executive Director of LHC.

HUD Conflict of Interest Review

Upon becoming LHC Executive Director, Mr. Charles Tate will be covered by and must comply with the Conflict of Interest provisions of the HOME Rule at 24 CFR 92.356. In connection with payments to Mr. Tate from a HOME-assisted activity for services completed prior to his employment as Executive Director, a written request has been submitted to HUD to grant an exception to the Conflict of Interest provisions at 24 CFR 92.356 so long as such payments to Mr. Tate are made in a manner consistent with the State Ethics Opinion. An exception may be considered by HUD only after the following has been provided to HUD:

1. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
2. An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exception is sought would not violate State or local law.

Public Disclosure of Conflict of Interest

Documents and legal authority pertaining to the State Ethics Opinion are posted to the LHC website under Public Comments and Notices at www.lhc.la.gov. Included in this posting are LHC's correspondence to Ethics Board describing Mr. Tate's consultant services and payments to be received during his employment as Executive Director, the State Ethics Opinion, relevant state statutes, the referenced Conflict of Interest provisions of the HOME Rule at 24 CFR 92.356, and relevant correspondence between LHC and HUD, including the written request to HUD to grant an exception to the Conflict of Interest for Mr. Tate. LHC Board Secretary, Barry Brooks, may be contacted at 225-763-8773 for additional information.



STATE OF LOUISIANA
DEPARTMENT OF STATE CIVIL SERVICE
LOUISIANA BOARD OF ETHICS

P. O. BOX 4368
BATON ROUGE, LA 70821
(225) 219-5600
FAX: (225) 381-7271
1-800-842-6630
www.ethics.la.gov

June 20, 2016

E. Keith Cunningham, Jr.
Interim Executive Director
Louisiana Housing Corporation
2415 Quail Drive
Baton Rouge, LA 70808

Re: Ethics Board Docket No. 2016-531

Dear Mr. Cunningham:

The Louisiana Board of Ethics, at its June 17, 2016 meeting, considered your request for an advisory opinion regarding the propriety of the Louisiana Housing Corporation (LHC) appointing Charles Tate as its Executive Director. You stated that Mr. Tate is currently the CEO of Community Directions, Inc. (CDI), a nonprofit, state-certified Community Housing Development Organization. CDI has received federal resources through LHC following competitive "Notices of Funding Announcements" to help fulfill its shared mission with LHC to create and preserve affordable housing for Louisiana citizens of modest means. You stated that Mr. Tate has previously provided management and development services for programs and projects sponsored by CDI and, through a company in which he owns 90%, Jasmine Consulting, LLC, development consulting services to other nonprofits for which he has not yet been paid. You also stated that if appointed as Executive Director of LHC, Mr. Tate intends to resign his position as CEO of CDI, but may occasionally, if permitted, provide additional, uncompensated, affordable housing assistance to CDI and other nonprofits, to see previously submitted nonprofit projects through to closing and completion.

As noted in your request, La. R.S. 40:600.90H(1) provides that if any member of the board of directors or any officer or employee of the corporation shall have an interest, either direct or indirect, in any contract to which the corporation is, or is to be, a party, or in any lending institution requesting a loan from or offering to sell insured mortgage loans to the corporation, such interest shall be disclosed to the corporation in writing and shall be set forth in the minutes of the corporation. Furthermore, La. R.S. 40:600.90H(2) provides that notwithstanding the provisions of R.S. 42:1112, no member of the board of directors and no officer or employee having such interest shall participate in any action by the corporation, including but not limited to discussion and voting on any issue bearing on that interest, and the member of the board of directors shall recuse himself from any action taken by the board of directors. Finally, La. R.S. 40:600.90F subjects LHC and its board to the Code of Governmental Ethics only to the extent that it does not conflict with La. R.S. 40:600.90.

Generally, La. R.S. 42:1113A(1)(a) prohibits public servants, other than appointed board members, their immediate family members, or legal entities in which they have a controlling interest, from entering into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant. Further, La. R.S. 42:1112A prohibits a public servant from participating in a transaction involving his governmental entity in which he has a substantial economic interest. Given the language of La. R.S. 40:600.90 F and H, the Board

concluded, and instructed me to inform you that, this statutory provision appears to create an exception to the provisions in La. R.S. 42:1112A and La. R.S. 42:1113A(1)(a) to allow the Executive Director of LHC to have an interest in a contract to which LHC is, or is to be, a party and to allow the Executive Director to recuse himself from participating in a matter which otherwise would result in a violation of La. R.S. 42:1112. Furthermore, the Executive Director of LHC would not be required to submit a disqualification plan to the Ethics Board for approval. In the future, if you have a specific contract that you would like the Board to address, you will need to submit an advisory opinion request and provide more specific information about the proposed contract.

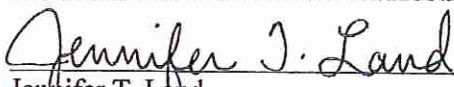
The Board also concluded, and instructed me to inform you, that the Code of Governmental Ethics would not prohibit Charles Tate, as Executive Director of LHC, from performing uncompensated, affordable housing assistance on projects in which he did not previously provide management, development, consulting or other services to CDI and other nonprofits that have a financial relationship with LHC as long as there is no promise of future payment. La. R.S. 42:1111E(1) prohibits a public servant and any legal entity, of which the public servant is a director or employee, from receiving any thing of economic value for assisting a person in a transaction, or in an appearance in connection with a transaction, with the agency of such public servant. La. R.S. 42:1111C(2)(d) prohibits a public servant and any legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent from receiving compensation for services rendered to or for any person who has or is seeking to obtain a business, contractual or financial relationship with the public servant's agency.

CDI and other non-profits receive federal resources through LHC. Therefore, while he is the Executive Director of LHC, Mr. Tate and Jasmine Consulting, LLC would be prohibited from providing assistance on projects in which he previously provided management, development, consulting or other services to CDI and other non-profits while he serves as the Executive Director of LHC. However, Mr. Tate would not be prohibited from being paid for services he or Jasmine Consulting, LLC provided to CDI, and any other non-profits that have a financial relationship with LHC, prior to his employment with LHC while he serves as the Executive Director of LHC.

This advisory opinion is based solely on the facts as set forth herein. Changes to the facts as presented may result in a different application of the provisions of the Code of Ethics. The Board issues no opinion as to past conduct or as to laws other than the Code of Governmental Ethics. If you have any questions, please contact me at (800) 842-6630 or (225) 219-5600.

Sincerely,

LOUISIANA BOARD OF ETHICS


Jennifer T. Land
For the Board

Cc: Charles Tate (via E-mail)